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REPORTS

NOTES OF THE WEEK

Jury Service

Cases in which persons whose names are marked in the electors' list as liable for jury service, and who claim that they are not liable, do not often result in proceedings before magistrates' courts. The recent considerable increase in the number of persons liable for service may alter this state of affairs, and two instances have come to our notice.

The procedure is for the objector to apply to the electoral registration officer to have the mark indicating his liability removed from the register. If the registration officer declines, the objector may apply to a magistrates' court for a declaration that he ought not to be marked as a juror. The ground of objection must be some disqualification or exemption.

In a case which came before the Walsall magistrates' court, the application for exemption was on what were described as purely personal grounds. The applicant was a dairyman with an invalid wife, and it was stated that, while he would wish, if he could, to serve on a jury if called, he asked for exemption because his absence from business would cause considerable inconvenience to his customers, and some loss to himself. In opposing the application, the town clerk pointed out that classes of persons not liable for jury service were quite clearly defined, and the applicant was not within those classes.

The clerk advised that it was clear from the statute that if a person qualifies and is liable to serve, his name shall be marked as liable unless he is exempted by law. Dismissing the appeal, the chairman said the court was of opinion that its powers were limited and that the magistrates could not allow exemption on any point other than law.

In another case, reported in the *Manchester Guardian*, the appeal was on the ground of the applicant's irregular hours of work and lack of spare time; he and his wife were both working, he was buying a house and was doing pointing, painting and repairs.

In this case also the clerk called attention to the list of specific exemptions from jury service "ranging from peers to magistrates' clerks." Refusing the application, the chairman said the court had no power to make an order.

In both cases the applicants were reminded that if they were actually summoned to serve, they could apply to the sheriff or the clerk of the peace and ask for exemption from service on the ground of hardship.

Keeping a Dog

Following the conviction of a man for keeping a dog without a licence when he said he was not its owner but was only looking after it for another man, the *Daily Express* discussed the question of what is meant by "keeping." The proprietor of a boarding kennels is quoted as saying that if he had to take out licences for all the dogs entrusted to him he would soon be bankrupt and he had never been asked for a licence.

This must surely be a question of what is reasonable. It would be startling if a man who took in his neighbour's dog for a few weeks, while the neighbour was on holiday or in hospital, had to pay for a licence, and we have never heard of a prosecution in such circumstances. The position would be different if the owner had gone away for an indefinite period, especially if there was in fact no current licence. The licence is for a person to keep a dog, and is not identified with a particular dog. If the owner disposes of his dog and obtains another he does not have to take out a fresh licence, because he is already licensed to keep a dog. In this the licence is quite different from a motor-car licence, which is in respect of a particular car, and which can be transferred with the car from one owner to another, and is not a general licence to a person to keep a car.

The statutory presumption is that a person having charge of a dog, or on whose premises it is seen, is its keeper, but a defendant who says he is only minding the dog temporarily and is not "keeping" it, contends that he has rebutted that presumption.

Usually, of course, it is the owner alone who takes out the licence, but there are circumstances in which a person who is not the owner may properly be held to be keeping it. Such

cases are uncommon and magistrates have to decide when there is "keeping" within the meaning of the statute. We have not traced any High Court decision on the point. Perhaps some day application may be made for a case to be stated.

Fit Person Orders and Supervision Orders

In drawing up orders and convictions of magistrates' courts it is essential that these documents should show on the face of them that the court had jurisdiction. This is generally a matter of time and place, but there may be other points, as was illustrated in the case of *R.* v. *Darlington Juvenile Court, ex parte West Hartlepool Corporation* (1957) 121 J.P.N. 102.

A juvenile court had made an order committing a child to the care of a local authority, believing, though mistakenly, that the authority had consented. Consent was necessary because there was in existence a supervision order in respect of the child, and the proviso to s. 76 (1) of the Children and Young Persons Act, 1933, applied. The order recited the fact that there was a supervision order, but did not state that the consent of the local authority to the making of the fit person order had been given. On a motion for an order of *certiorari* to quash the fit person order on the ground that the juvenile court had no jurisdiction, the Divisional Court quashed the order and held it was bad on the face of it. The Court also said that an order should contain the particulars necessary to show jurisdiction.

Printed forms generally do contain all such matters as are required to show jurisdiction, and there is, therefore, usually little danger that any point will be overlooked. A form may, however, need revision as the result of some amendment in the law, in order that it may conform to the words of a statute and be good on the face of it.

Free Translation

A solicitor prosecuting a man at Swansea magistrates' court on a charge of stealing scrap metal told the bench that in a statement to the police the man had said, "I am the fall guy in this deal." For the benefit of the magistrates, the solicitor added, "I understand this is an American expression which means he has to carry the can—to use another expression."

From a variety of causes, including American films and the presence of American service men in this country, we have enriched our language by the addition of many crisp and apt expressions, though not all of them are acceptable to purists or highbrows. This expression "fall guy" has a fairly obvious meaning, rather more obvious than the familiar reference to "carrying the can," or its alternative "holding the bag."

We often use expressions of which the meaning is well known, but whose origin is obscure. The "fall guy" might have said he was left "to bear the brunt," but how many people know what is the meaning of "brunt." One authority has suggested that it may be connected with the English word "burnt" and several suggest an Icelandic origin with the meaning to advance with the speed of fire, as a standard in the heat of battle. At all events we know it means taking the chief stress or shock, or having the worst share in some crisis or adversity. The meaning is what really matters, but the origin of words is to many people an interesting study.

Removal of Disqualification

Section 7 (3) of the Road Traffic Act, 1930, allowed a person who had been disqualified for driving to apply for the removal of the disqualification at any time after the expiration of six months from the date when the disqualification was imposed. Section 27 of the 1956 Act amended this provision by enacting that the application may be made after six months if the disqualification is for less than a year, after one half of the period of disqualification if that period is for less than six years but not less than one year and, in any other case, after three years. This section came into force on November 1, 1956, and it begins as follows:—"No application shall be made under subs. (3) of s. 7 of the Act of 1930 for the removal of a disqualification before the expiration of whichever is relevant of the following periods from the date of the conviction, or order made in consequence of a conviction, by virtue of which the disqualification was imposed" and then follow the details of the periods given above.

The Scotsman of January 24 reports a case in which it was argued, on behalf of a disqualified person, that because his disqualification was ordered before s. 27 of the 1956 Act came into force (he was disqualified for five years in October, 1955), he was not bound by the provisions of that section and could apply now for removal although 2½ years have not elapsed since the disqualification was imposed. The court held that the section did apply and that the application could not then be made. If we may say so this seems to us to be the obvious meaning of s. 27. Had the meaning suggested by the applicant been intended we think that the section would have been made to apply, in terms, only to disqualifications imposed on or after the date of the section's coming into force.

A Witness on the Bench

An unusual situation arose in a magistrates' court recently, according to a report in the *Newcastle Journal* of January 25, when the chairman of the bench which had begun to hear a case of careless driving found that he was the witness whom the police had been unable to trace after there had been a collision between two vehicles which led to the proceedings being brought. The chairman realized that he was the driver of a car which had overtaken one of the vehicles just before the collision, and he remembered the collision. Quite properly he declined to continue hearing the case.

The report states that he also declined to give evidence for the police, but it is not too clear just what this means. If he was a necessary witness whose evidence was essential to enable the court to be made aware of all the relevant facts of the case we think it is unlikely that he would have declined to give evidence, and indeed he could, of course, have been summoned as a witness by virtue of s. 77 of the Magistrates' Courts Act, 1952. We should think it is more likely that such evidence as he could have given was considered not to be material.

The Pedestrian

The Pedestrians' Association publishes a quarterly journal and we have had sent to us the current quarter's edition. As is to be expected it looks at road safety problems primarily from the pedestrians' point of view, but the important thing is that the emphasis all the time is on safety, which must mean safety for all classes of road users. There is a short article calling attention to the particular difficulties of those living in villages, and one cannot help being impressed by the fact that there seem to be so many cases in which young children have to walk to school along main roads which have no footpaths. Distances of two and three miles do not seem to be uncommon. There are some 3,455 reports of insufficient footpaths to and through villages. Attention is also called to the

merits of what is termed "defensive driving." The Bishop of Chester is quoted as suggesting three rules which, if universally observed, would make our roads much safer. They are: (1) Never take a risk; (2) always drive defensively; (3) never forget your good manners which means, in effect, put your Christianity into practice when driving or walking upon our roads.

"Defensive driving" can be defined as driving on the assumption that you will be prepared to deal with emergencies which may arise because of the unexpected, foolish or wrongful actions of other road users. This is in contrast to driving to a fine margin of safety on the assumption that the other person will never make a mistake or do anything wrong or foolish. It is suggested that the difference can be summed up by asking a driver not "Were you to blame?" but "Could you have avoided the accident?" On the principle of safe driving if you could have avoided the accident and did not do so you were to blame.

Another point made in the journal is the need to relieve congestion on the roads by making the maximum use of other means of transport, our railways and canals, and by preventing the parking of cars in a manner which reduces the capacity of the roads to carry the traffic for which they would otherwise be available.

These are only a few of the matters dealt with but they make it clear, we hope, that the journal is of general interest and is not concerned only with pedestrian affairs.

Local Government Finance

The Minister of Housing and Local Government's long awaited statement on the future of local government finances has now been made and it has fallen to Mr. Henry Brooke (Mr. Sandys' successor) to make it in the House of Commons.

The Minister said that the Government had completed their review and that he was now ready to enter into discussions with the representatives of local authorities.

He went on to say that the Government's proposals were designed to strengthen the local government system and to improve the financial relationship between the central Government and local authorities.

Mr. Brooke then referred to the two main dangers of percentage grants, firstly of excessive detailed central supervision over the spending of the money and, secondly, the absence of certainty year by year of the amounts of Exchequer contributions. His statement that the greater the independence of local authorities in the raising and the spending of their money, the better for the good health of local government, was greeted with wide acclamation in the House.

However, he went on to maintain his faith in the rating system for raising local taxation and did not think it was practicable to devise a satisfactory new source of local revenue. Nor did he approve of earmarking "for the direct benefit of local authorities any tax that is now levied nationally. . . ." After reciting the history of the 1929 decision to de-rate industry and freight transport Mr. Brooke announced the Government's decision to raise the rate contribution of these hereditaments from 25 *per cent.* to 50 *per cent.* This part of his statement was critically received by the Opposition, who obviously wanted to see 100 *per cent.* re-rating.

At the same time the Government intend a major recasting of the financial relationship between the Exchequer and local authorities. This will entail a radical revision of the structure of Exchequer grants, as well as some reduction of the grants to take account of the new rate income. With a few exceptions, where technical considerations make it not possible or desirable, specific grants will be replaced by a general grant of an amount fixed in advance for a short period of years, though not necessarily at the same level for each year of the period. The general grant will be distributed to all county and county borough councils by reference to objective factors (mainly of weighted population) which are readily ascertainable and afford a fair and reasonable measure of the relative needs of each authority. With this change, said the Minister, local authorities will acquire a great increase of responsibility in determining the money to be spent on the various services in accordance with local needs. ". . . Local government will become more truly local. . . ."

Under these proposals the amount of general grant-in-aid not tied in any way to individual services will, at present levels of expenditure, rise from less than one-sixth to close on two-thirds of the total Exchequer grants to local authorities.

It is also intended to revise the system of equalization grants on the basis of recommendations made in 1953, including the payment of grants direct to county district councils. The present method of highway grants will also be reviewed by the Minister of Transport. The Government intends so far as possible to bring all these changes into operation at the same time and after discussions with organizations affected and local authority representatives will introduce legislation to give effect to this purpose.

The Times in a leading article on February 13, is bluntly critical of the new proposals so far as they concern ways of expanding sources of revenue under local authority control and correspondingly counteracting the revenue derived from the Exchequer:—

". . . But all that is in prospect meanwhile is that the rating relief for industry and freight transport will be reduced at some date before 1961 from three-quarters to a half. Agriculture's complete exemption is not to be modified. After the various adjustments have been made the additional rate income at current poundages may be £16 million a year. This will make only a trifling dent in the £581 million the Exchequer is currently paying local authorities. . . ."

On the other hand the Government's proposals about reduction of the proportion of Exchequer grants under detailed central control are described as "revolutionary." Mr. Neville Chamberlain reduced the proportion of these grants to 64 *per cent.* Today the proportion is 85 *per cent.* and it is intended to cut it down to 40 *per cent.*

The new proposals provide much food for thought and coupled with the White Paper on the areas and status of local authorities in England and Wales (Comd. 9831 of July 1956) they form the basis for discussion of local government reorganization.

Our own comment is at p. 113, *post*.

Confusion

We do not know whether the advisers of the Minister of Transport and Civil Aviation, of the Statute Law Committee, have any project for early consolidation of the Road Traffic Acts, 1930 to 1956. (These are to be cited together by that style, by virtue of s. 65 of the last mentioned Act.) The earliest of the series is less than thirty years old, and it might seem premature to think about consolidation, although there have been precedents, even before consolidation of the statute law became recognized as a normal duty of Parliament. We may refer to the Housing Act and the Town Planning Act, both

passed in 1925. The need for re-statement in intelligible form of the topics dealt with by the Road Traffic Acts seems to us more urgent than was the need for the consolidations effected in 1925. We have already been brought when dealing with Practical Points to realize the difficulty of discovering the law on some matters of everyday occurrence; the confusion in which some provisions of the Act of 1930 have been left by the Act of 1956 is indescribable. These provisions are, moreover, among those which closely concern the road user and the ordinary constable. The motoring organizations and the police authorities will no doubt issue guidance with the help of their respective legal advisers. We have ourselves attempted to give help by republishing in booklet form the article on Disqualifications and Endorsements, which appeared at 120 J.P.N. 785. The law publishers, also, will in the regular course produce supplements for noting up past volumes of the statutes and existing text books, and our industrious readers are no doubt still busy writing in the margin of their copies of the Road Traffic Acts, 1930 to 1947. But these processes cannot take the place of a statutory re-statement of the law in intelligible shape. We should like to be assured that the consolidation branch of the office of the Parliamentary Counsel had the task in hand.

*CRIMINAL LAW: AN HISTORICAL STUDY

Eight years have elapsed since the publication of the first volume of this remarkable work, and the further volumes have been eagerly awaited. It was recognized that this was an immense task undertaken by an exceptionally gifted writer and that this history of our criminal law would hold an important and permanent place in legal literature. The first volume revealed the subject as of absorbing interest not only to lawyers but also to all general readers who like to know something of the institutions of their country and of the way in which they have developed. Volume 1, by the way, contains much that is relevant to present discussions on capital punishment.

The second volume has for its subject "The clash between private initiative and public interest in the enforcement of the law." The common informer played for some time an increasing part in the enforcement of the law, and it is strange to read today of the activities in which he was engaged. It is stated that: "Throughout the eighteenth century, and in the early years of the nineteenth, a number of statutes were passed, which so widened the activity of common informers that an important section of criminal law came to depend upon them for its enforcement." They became, in fact, voluntary policemen, but they were able to make considerable sums of money in the form of rewards, of which a number of examples are given. At the same time such constables as there were often came under suspicion. It appeared that in some instances there were conspiracies to entrap men into committing offences and then to proceed against them for the sake of the reward. By 1816 *The Times* was urgently calling for investigation and people began to see that the system of common informers and rewards gave rise to scandals and ought to be replaced by some better method of enforcing the law. Nevertheless, well into the middle of the nineteenth century when trained and organized police forces were in existence, the state relied largely on the various benefits which accrued to private individuals from the discovery and conviction of offenders, as its main weapon against public disorder and crime, and the services of all kinds of criminals were used. Yet, curiously enough, "It would appear that the alacrity with which the government came forward to assist with rewards whenever the public peace or the safety of state dignitaries was threatened did not extend so uniformly to the capture of those who had injured constables in the course of their duty."

By the beginning of the nineteenth century the Thames force was doing efficient police duty but it had to put up with a lack of co-operation and even open hostility from the revenue officers. "This was partly due to the fact that, by reason of their unreliability, the revenue officers feared the vigilance of an effective force almost as much as did the criminals themselves."

If there was public opposition to the formation of a force of professional, trained police, so also was there public suspicion about the appointment of stipendiary justices. The fact that by tradition the office of justice of the peace was unpaid was felt to be a guarantee that its holders would be independent of the government, and the appointment of stipendiary magistrates, especially when the chief magistrate was in constant attendance at the Home Office, caused uneasiness. How completely the police forces and stipendiary magistrates have falsified suspicions and won general confidence is now a matter of common knowledge.

Volume 3 deals with the "cross-currents in the movement for the reform of the police," and shows how the English way of requiring the members of communities to be responsible for the maintenance of law and order, rather than imposing law and order from some central authority using what we now call a police force persisted through the centuries. As time went on, however, it became clear that the old system of watchmen and parish constables did not meet the needs of the growing industrial centres and expanding trade. As Dr. Radzinowicz says "By the middle of the eighteenth century there was already a growing realization that the traditional arrangements for keeping the peace had become inadequate; but it was a further 75 years before a radical break was effected and a modern police established. . . . The recasting of the ancient civil power was not just a matter of the appointment of more and better constables but was regarded as potentially a grave constitutional issue likely to lead to exhorbitance in the powers of the Crown and its ministers, with jeopardy to the chartered liberties of the subject." Again: "The reform of the police had proved an issue even more controversial than the revision of the criminal law; and the pace of its advance slowed down even more when the ideas that went to the formulation of a science of crime prevention came perilously close to the doctrine of a police state." This fear was not allayed until, after some years of experience of the Metropolitan Police, it became realized that a trained professional police force was not a "blue militia" but a body of civilians at the service of all law abiding people. Fortunately, our police have remained emphatically civilian, and the public has learned to appreciate them. It has never been better put than by Sir John Fielding,

* A History of English Criminal Law and its Administration From 1750. By Leon Radzinowicz, LL.D. (Cracow), LL.D. (Rome), LL.D. (Cantab.), Fellow of Trinity College, and Director of the Department of Criminal Science, University of Cambridge. London: Stevens & Sons, Ltd., 119 and 120, Chancery Lane, W.C.2. Volumes 2 and 3. Price £4. 4s. net each volume.

when he said that a police proper for England must always be agreeable to the just notion of the liberty of the subject as well as to the laws and constitution of this country.

There are interesting accounts of the various expedients adopted at different times in the attempt to reduce crime and generally to improve moral standards. Traders, bodies of local inhabitants and various societies employed men on police duty, issued pamphlets or offered rewards. John Wesley preached a sermon before the Society for the Reformation of Manners in 1763 in which he advised members to try mild methods before setting the machinery of justice in rotation, admonition rather than prosecution. A Society for the Suppression of Vice took the same line. Public and individual notices were issued in the hope that prevention of crime might be achieved. It seems hardly necessary to add that hopes were not fulfilled. It is recorded that of the "reforming constables" employed by one such society a Judge of Assize said: "These constables are of the reforming kind, reformation generally produces greater evils than those it attempts to redress." It was becoming apparent that the sanctions of criminal law must be used when appeals for higher standards of conduct proved ineffective, and that for the due enforcement of the law an efficient police was indispensable. At the same time, the general condition of the populace affected the whole question. "To Colquhoun," says Dr. Radzinowicz, "the prevention of indigence was closely connected with the prevention of crime, and in pursuance of that common end it was essential that public assistance, criminal justice and police systems should be effectively interconnected and worked in conjunction."

It was early recognized that in order that the police might perform their functions adequately the public must be induced to report offences to them, and we find suggestions for compensation to prosecutors and witnesses for loss of time, and even a suggestion that failure to report any crime should itself be a criminal offence. Every crime that was not reported, it was said, and every unjustifiable acquittal, was a failure of justice and a stimulus to fresh crime.

The appendices to both volumes contain a number of interesting proclamations and other documents, including some comparison between English and French police systems.

Such a work is one to which the adjective "monumental" can justly be applied, but it is by no means heavy reading. Indeed, there is more enjoyment to be derived from it than from many a less serious book.

WARNING OF INTENDED PROSECUTION

Our reply to P.P. 19 in our issue of January 19 has brought letters from several readers, and we feel that the arguments advanced merit a longer reply than is possible in a practical point.

The argument which they advance can be summarized, we hope with justice to them, as follows:—Section 11 (1) (*e*) of the Road Traffic Act, 1956, specifically applies the provisions of s. 21 of the Road Traffic Act, 1930, to cyclists so far as the offences of dangerous and careless driving are concerned and carefully excludes that part of s. 21 which relates to registered owners. From this they infer that s. 30 of the 1956 Act, when extending the provisions of s. 21 to offences under ss. 49 and 50 of the 1930 Act, does not have the effect of applying those provisions to cyclists who offend against the two last-mentioned sections.

We remain unconvinced and we should like to say why. Let us look first at s. 21 of the 1930 Act. It provides that when *a person* is prosecuted for an offence under any provision of part I of that Act relating to speed or to dangerous or to careless driving he is not to be convicted unless either he was warned at the time of the offence that the question of possible prosecution would be considered or within 14 days he was served with a summons or was served with, or sent by registered post, a "notice of intended prosecution." As an alternative to the service or sending of this notice to him the section allows it to be served on or sent to the registered owner of the vehicle. This alternative, as we have noted in our correspondents' argument, is excluded by s. 11 (1) (*e*) in its reference to cyclists, it being obviously inapplicable to them.

The offences to which s. 21, (as it applied before s. 30 of the 1956 Act came into force) related could be committed only by drivers of motor vehicles, but the wording of the section is "where *a person* is prosecuted for an offence under any of the provisions," etc. We come now to s. 30 of the 1956 Act which is as follows:—"Section 21 of the Act of 1930 (which provides that a person may not be convicted of excessive speed, reckless or dangerous driving or careless driving unless either warned at the time of the possibility of his being prosecuted or within 14 days thereafter either summoned for the offence or notified that he is to be prosecuted) shall apply to offences under ss. 49 and 50 of that Act (which relates respectively to failure to obey traffic directions or to conform with instructions given by traffic signs and to leaving vehicles on roads in dangerous positions)."

It is pointed out by one of our correspondents, whose opinions we very much respect, that our answer to the said practical point states wrongly that s. 21 has been amended by s. 30 whereas in fact its application is merely extended by s. 30 which in terms applies it to offences under s. 49 without specifically extending this application to types of vehicles other than motor vehicles. We do not agree with his reasoning on this point. Our argument is that s. 21 relates to a person who is liable to be convicted of the offences referred to in the section and that when, with no qualification *restricting* its application to persons driving motor vehicles, it is extended to offences under ss. 49 and 50 the extension must relate to "a person charged with an offence under s. 49 or s. 50." It is interesting to note that the summary in s. 30 of the effect of s. 21 mentions the need for the warning, if we may so call it, being given to the person liable to be convicted and makes no mention of the alternative of sending a notice to the registered owner. This alternative has a clear purpose and intention. If a motorist is not stopped at the time his identity cannot be established but it may be possible to trace him and prevent his escaping prosecution by dealing with the registered owner of the vehicle who is likely to know who was driving it at the time in question. Section 11 (1) (*e*) recognizes that this provision cannot apply to cyclists and it would certainly have been clearer had s. 30 contained a similar provision so far as persons other than motor vehicle drivers are concerned. But we cannot agree that this omission has the effect which our correspondent suggests of excluding persons other than motor vehicle drivers from the benefit of s. 21, as extended by s. 30.

. On this last point we would emphasize that s. 21 and s. 30 are sections conferring a benefit on defendants, they are not penal provisions. If they were it would be a much stronger argument to say that the omission from s. 30 of any reference to owners implies that the extension of s. 21 made by s. 30 is intended to apply only to motor vehicle drivers. But we do not agree that this omission can exclude from the *benefit* of s. 21 any person charged with an offence against s. 49 or s. 50 of the 1930 Act when s. 30 does not in terms exclude him. To put our case at its weakest we would say that there must be a doubt as to the effect of this omission and that that doubt must be resolved in favour of a defendant and not to his prejudice.

For these reasons we are still of opinion that the answer we gave to the practical point in question is correct, but we should perhaps add that in our view the explanation for the inclusion in the 1956 Act of s. 11 (1) (*e*) is to make that section complete in itself, although we are of opinion that without it, on the wording of s. 21 of the 1930 Act, the same result would have been achieved. The main purpose of s. 11 is to apply to cyclists the provisions of the 1930 Act relating to dangerous driving, careless driving and driving whilst under the influence of drink. The draftsman, we apprehend, was concerned to tie up all the loose ends resulting from these changes and included, *inter alia*, s. 11 (1) (*e*). But we would argue that without that subsection once ss. 11, 12 and 15 of the 1930 Act were made to apply to cyclists s. 21 would automatically apply to a cyclist charged with an offence against s. 11 or s. 12 because he would come automatically within its provisions as *a person prosecuted for an offence* under one of those sections. We note that after s. 11 (1) (*f*) there is this phrase: "shall subject to the provisions of this section apply to persons riding bicycles and tricycles, not being motor vehicles, as they apply to drivers of motor vehicles, and references in those enactments to motor vehicles, drivers and driving shall be construed accordingly." The parts of s. 21 relevant to persons prosecuted for dangerous and careless driving (and now for offences against ss. 49 and 50) contain no reference to motor vehicles or drivers; the only one dealt with is "a person prosecuted for an offence" under the section in question. We do not pretend that this latter part of our argument carries the case much further. We rely principally on the fact that s. 21 confers a benefit, and that s. 30 does not expressly exclude cyclists, horse-drawn vehicle drivers and others, other than motor vehicle drivers, who are clearly included by the language used as being persons prosecuted under one or other of the relevant sections.

RE-RATING AND THE NEW BLOCK GRANT

Local government will agree with the principle of re-rating of industry announced to the Commons on February 12 last by the Minister of Housing and Local Government: it will not agree readily with the partial application of that principle which Mr. Brooke proposed to the House.

In their revised report on the abrogation of derating published in November, 1956, the Society of County Treasurers estimated the increases of rateable value from the re-rating of industrial and freight transport hereditaments to be £108 million, an increase of 17 *per cent.* over the total rateable value of £623 million in the new valuation lists. It may therefore be assumed that the present proposal to raise the rate contribution from 25 *per cent* to 50 *per cent.* will create some £36 million of additional rateable value. It should not be imagined, however, that the local authorities will be able to retain the entire benefit of this increased source of income or that industry will be the loser to the full extent of the addition. The Minister has intimated that local authorities will suffer reduction of grants to take account of the new rate income, and industry of course can put rates paid as a charge against profits for income tax purposes. Whether this reduction of income to the Exchequer will be compensated in full by deductions from local authority grants remains to be seen: it is quite possible that on balance the Treasury may suffer some loss.

Like much of what Mr. Brooke said the information about re-rating was given only in the barest outline, his plea being that he wished to consult the local authority associations before crystallizing his proposal in the form of a White Paper or otherwise; but certain things are abundantly clear. The Government are not prepared to consider introducing a new source of local revenue nor will they earmark for the benefit of local authorities any tax that is now levied nationally. In these views they are likely to have the support of the associations, for example the view of the Society of County Treasurers, adopted by the County Councils' Association, was that none of the various new forms of local taxation suggested in the past, such as a local income tax, a poll tax or the rating of site values, was satisfactory as they would involve all kinds of difficulties and complications; and that there are serious disadvantages in the system of assigned revenues whereby the proceeds of certain kinds of national taxes would be allocated direct to local authorities. Such disadvantages include the difficulty of sharing the amount collected equitably between different areas and the danger that future governments might follow the bad example of the past and be unable to keep their fingers off part, at least, of what should have belonged to the local authorities. So the patched up rating system continues and the four main classes of hereditaments, industrial, commercial, domestic and Crown will for a number of years be rated at less than true rateable value. It is something fantastic and no doubt would have been considered unexceptionable by the Mad Hatter: he would have thought it admirable that no-one should be rated on the proper basis. Mr. Brooke made one of the classic masterpieces of under-statement when he said: "There are still some difficulties to be overcome in the rate system."

The new system of Exchequer grants was described but again only in bare outline. It is to be a radical revision, we are told: except in a few cases where technical considerations make it not possible or desirable, specific grants will be replaced by a general grant of an amount fixed in advance for a short period of years, although not necessarily at the same level for each year of the period. This general grant will be distributed to all county and county borough councils in England and Wales, and to county and town councils in Scotland, by reference to factors (mainly weighted population) which are readily ascertainable and are thought to afford a fair and reasonable measure of the relative needs of each authority.

It is also proposed to revise the system of equalization grants on the basis of recommendations made in 1953, including the payment of grants direct to district councils.

In terms of cash the position is as follows:—

Present Exchequer grants:—

	£m.
Specific	508
Equalization	73
	£581

Proposed Exchequer grants may be:—

Specific (mainly housing and highways)	229
General block grant	279
Equalization	73
	£581

These figures are given to illustrate broadly the relationship between the different kinds of grants. It must not be thought that total receipts will be the same as before: they will almost certainly be less.

So the grants for the care of children, for health services, for civil defence, for the police and fire services, and most importantly for education, may all disappear and be replaced by a block grant. In relation to the equalization grant the Minister referred specifically to proposals made in 1953, and it is possible that the new block grant might also be distributed on the basis set out in the 1953 report of the committee which investigated the operation of equalization grants. This committee could find no evidence of extravagance among local authorities receiving equalization grants but was nevertheless obsessed by the fear that extravagance might at any moment in the future rear its fearsome head. In order to annihilate this chimera the committee proposed that in future equalization grants should be limited by reference to average expenditure per head of weighted or unweighted population; there were to be separate aggregations for each main class of authority and the actual grant receivable by the individual authority would depend on the relationship of its expenditure to that of the class to which it belonged. If it spent more than the average after adjusting the differences in the base period, the excess would earn no grant. Details of the effect of this scheme were never published but it was admitted that the application of the formula would involve some authorities in appreciable loss of grant. That this would be the effect of the system proposed by Mr. Brooke was the fear of members who questioned the Minister. Mr. Mitchison asked if he was aware of the dangerous implications of the block grant system particularly in relation to education, health and welfare: Mr. Woodburn said the statement appeared to contain a great threat to lower the standard of contributions from the Government to local authorities and when Mr. Monslow asked if it was not the purpose of the proposals to reduce taxation by transferring the burden to local authorities he was told only that the claims of both taxpayers and ratepayers should be taken into account and referred to the Minister's opening statement. In that statement the train of thought is tolerably clear: not only, it was said, has the ratio between grants and rates altered from one to two 30 years ago to its present figure of six to five, thus reducing "the financial independence of local authorities and their degree of responsibility to their own ratepayers" but much of this increased Exchequer aid is on a percentage basis. This basis, we are told, involves two disadvantages. First, there may be danger of an excessive degree of detailed central supervision over the spending of the money and secondly there is no certainty from year to year what the Exchequer may be called upon to contribute.

The new system therefore has clear advantages for the Government. Exchequer liability would be fixed and there is a strong chance of it being less than would otherwise have been the case: there are also other potential savings which have no doubt appealed to the Chancellor; for example, some at least of those who centrally supervize may no longer be required and local expenditure itself may be reduced. These are powerful arguments if the aim is a reduction of public expenditure but such an object involves abandonment to a considerable degree of the function of grants as encouragement to provide a reasonable standard of service.

It is difficult to discern the benefits to local authorities but the disadvantages are very clear, including the fact that many will lose heavily. The block grant has been for decades, and apparently still is, a firm favourite with the Treasury. Some of our readers will remember that the Meston Committee, set up in 1922 to investigate what system of grants could be substituted for the percentage grant system, never reported. No official explanation was ever given but Mr. Graham, one of the committee members, said in 1926 when it was announced in the House that a system of block grants was to be introduced:—"that committee took a great mass of evidence. It is common knowledge that 85 *per cent.* of that evidence was against any serious modification of the percentage system." The Institute of Municipal Treasurers and Accountants published the evidence they gave to the committee which included this about block grants:—"they are crude and empirical, difficult (if not impossible) to establish on any equitable basis and most troublesome to adjust on periodic revision."

Nevertheless in 1925 the Ministry of Education issued Circular No. 1371 proposing a block grant based on a three year average of expenditure in place of the existing education grants. The circular was never implemented because of the widespread opposition it aroused.

So it looks as if the same battle may be fought again. It is interesting that in their book "Local Expenditure and Exchequer Grants" Dr. Lees and his collaborators, after demonstrating that no satisfactory unit grant could be devised for most services because of the impossibility of arriving at representative unit costs say: "We have spent very little time on the claims of a general grant intended to absorb specific grants . . . if in more settled cost conditions it has as yet proved impossible to devise an equitable unit grant for a specific service, it is a fortiori likely to prove impossible to devise an equitable general grant to replace specific grants. If equity is to be an important consideration the general grant cannot be regarded as a serious competitor to the percentage grant."

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Friday, February 15

LOCAL GOVERNMENT (PROMOTION OF BILLS) BILL—read 2a.

ANIMAL BOARDING ESTABLISHMENT BILL—read 2a.

AERIAL ADVERTISING BILL—read 2a.

MAINTENANCE AGREEMENTS BILL—read 2a.

NORTHERN IRELAND (COMPENSATION FOR COMPULSORY PURCHASE) BILL—read 2a.

THE USE OF SCHOOLS AS POLLING STATIONS

Returning officers have a statutory right of entry into schools controlled by local education authorities, including voluntary schools, for the purpose of using them as polling stations at parliamentary general elections and municipal elections. In most cases the whole of the ground floor of the school concerned is used and arrangements are made between the returning officer's representatives and those of the local education authority for the erection of polling booths in classrooms and halls of schools. In the case of a county borough council or an education "excepted district," the returning officer will also be the town clerk of the authority whose schools are to be utilized in this way. A clerk of a county council will normally act as returning officer in county council elections, but may delegate his powers and duties in this respect to the clerk of one of his county districts. The town clerk of a metropolitan borough can act as deputy returning officer for the clerk of the London county council in L.C.C. elections. Such delegation is authorized under s. 14 of the Local Government Act, 1933. In the case of a borough which is divided into wards, the returning officer shall be the mayor or a person appointed by the mayor (generally the town clerk).

Difficulties can sometimes arise where the authority conducting the elections is not the same authority as the one whose schools are being used as polling stations. In view of the difficulties attendant upon the use of a number of classrooms by the general public, closure or at any rate partial closure of schools is necessary. Municipal elections in England and Wales are now held triennially on the second Thursday in May. An exception is that the London county council elections are held on the nearest Thursday to the first day of April. The elections for metropolitan borough councils are now held on the same day as the municipal elections for the rest of the country, in May. All county councillors retire together, as do the councillors of metropolitan boroughs and parishes, but only one third of the councillors of the boroughs outside London and of county district councillors retire together. This means that there must be annual elections in May of a third of the councillors of county boroughs, non-county boroughs, urban district councils and rural district councils. In addition, returning officers must be prepared to requisition schools to be used as polling stations in a parliamentary general election, at any time to be decided by the Prime Minister of the day.

Since the War it has been rare for a parliamentary or local election to be held during school holidays. In the case of both parliamentary general and by-elections it is clearly necessary for the Prime Minister and Government respectively to retain the utmost freedom of choice in deciding appropriate dates. Such considerations do not however apply in the case of local elections, where the dates are already fixed. It is therefore suggested that all municipal elections should be held during the school Easter holidays on the second Thursday after Easter Sunday. This appears to be the most convenient date, as schools controlled by local education authorities usually close for the Easter holidays during Holy Week for a period of about three weeks. The date proposed would avoid the week in which the Bank Holiday falls, as many people nowadays choose to have a short holiday during that period. It may be that this proposal could be linked with that for a fixed Easter, but it is submitted that it need not wait on this.

There are several arguments in favour of reducing the numbers of school election closures in this way and an attempt will now be made to enumerate them. As has already been indicated, in the areas of municipal boroughs of both types and of urban and rural districts it is necessary to have municipal elections annually. In a general election year it is possible for a school to be closed during term-time three or four times if there are also by-elections. With so many mothers of small children out at work, an extra school closure can present quite a problem, and can also militate against road safety for children. A conscientious headmaster or headmistress is also faced with the difficult question : should the school be closed and the children, in many cases, left to run the streets or should the school remain open in difficult and cramped conditions ? It may be argued that the schools are closed for comparatively long periods in the summer, winter, and spring and that the children are somehow coped with by working mothers during those periods. The answer here is that a definite effort is usually made to look after the children during the recognized school holidays, either with the assistance of relatives or by linking the parental work with term-time only.

In cases of municipal by-elections it is suggested that they should be held during the next nearest school holidays. Polling is so low in these elections that not much would be lost if they were held in August, if necessary. Certainly the closure of a school does not seem justified merely for the purpose of holding a municipal by-election where the poll may be as low as 10 *per cent.* of the electorate. Election closure of schools is not regarded as ordinary closure for the purpose of the School Grant Regulations made by the Minister of Education. In other words an election closure does not come out of a school's allocation of holiday closures, and the polling day will count as one of the 200 days of session which a local education authority school must achieve under the Regulations in order to rank for grant. This seems to be another excellent reason for the reduction in the number of times a school should be closed in order to be used as a polling station.

Although this would admittedly be only a minor reform, it can surely be conceded that the present practice is hardly justifiable in view of the low polls recorded at municipal elections, regrettable though this may be. In view of the fact that a comprehensive measure of local government reform, embracing areas, functions, and finance, has been half-promised during this session of Parliament, could not room be found for this small but desirable adjustment ?

R.E.C.J.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Lord Evershed, M.R., Denning and Romer, L.JJ.)

WOOTTON *v.* CENTRAL LAND BOARD

January 14, 15, 1957

Lands Tribunal—Costs—Discretion—Judicial exercise—Determination of development value by Central Land Board—Appeal to Lands Tribunal—Successful party overstating case.

CASE STATED by Lands Tribunal.

The appellant was the owner of land near Tattenham Corner, Surrey, which he intended to develop as a garden city. Plans were prepared by one Z and planning consent was granted in October, 1938, but, owing to the outbreak of the war, the land could not be developed.

He applied to the Central Land Board for the ascertainment of the

development value under s. 58 of the Town and Country Planning Act, 1947. He claimed that the development value was £270,000 odd, basing his calculation on the Z plan. The Central Land Board determined the value at £44,500 on the ground that the Z plan was irrelevant and that the value should be arrived at by taking a figure based on length of frontage on the roads. The appellant appealed to the Lands Tribunal which held that the method adopted by the appellant was the right one, and determined the value, after making adjustments, at £102,500. The hearing before the tribunal lasted five days and the hearing fees amounted to £500. The tribunal made no order as to costs on the ground that both parties had based their valuations on mistaken assumptions. The effect of the order was that the appellant had to pay the whole of the hearing fees. On appeal on the question of costs,

Held: the tribunal had failed to exercise its discretion as to costs judicially (i) because it disregarded that the proceedings were in the nature of an appeal from the decision of the Central Land Board, (ii) that on the vital question which principle should be applied the appellant had succeeded, and was, therefore, entitled to his costs except in so far as they had been increased by his mistakes. The proper order (made with the consent of the parties) was that the Central Land Board should pay half of the hearing fees and half of the appellant's costs before the tribunal.

Appeal allowed.

Counsel: *Stewart-Brown*, for the appellant; *Blain*, for the Central Land Board.

Solicitors: *W. H. Chitty & Fryzer*; *Treasury Solicitor.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

CHANCERY DIVISION

(Before Harman, J.)

RE FREEMAN-THOMAS INDENTURE. EASTBOURNE CORPORATION *v.* TILLY AND OTHERS

January 29, 1957

Local Authority—Plan to build school—Land subject to restrictive covenants—Discharge of restriction—Law of Property Act, 1925 (15 *and* 16 *Geo.* 5, *c.* 20), *s.* 84 (2).

ORIGINATING SUMMONS

In 1901 the tenant for life of the R Estate conveyed to the applicant, a local authority, 82 acres, part of the settled land. The authority, with the tenant for life " and others the owner or owners for the time being of the R estate . . . and his and their heirs and assigns," entered into, among others, covenants to keep the land for a public park or common and not to erect any building on any part thereof nor to fell any timber or timberlike trees without the consent of the owner for the time being. The R estate ceased to exist, there was nobody entitled to enforce the covenants contained in the conveyance of 1901, and the estate was broken up, houses being built on the land in question. The authority wished to build on a small part of the land subject to the covenants a grammar school, and asked under s. 84 (2) of the Law of Property Act, 1925, for a declaration that the whole land was no longer subject to the restrictive covenants. Thirty-nine parties living in the vicinity of the proposed school were joined as respondents, but nobody entered an appearance.

Held: the court had jurisdiction to make the declaration asked for because the covenants were absolute and could not be legally enforced, and, as none of the opponents appeared, the court would exercise its discretion and make the declaration in respect of part of the land so far as necessary.

Counsel: *Newsom, Q.C.*, and *Abel-Smith* for the corporation.

Solicitors: *Sharpe, Pritchard & Co.*, for town clerk, Eastbourne.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Cassels and Lynskey, JJ.).

R. *v.* HAVANT (HANTS.) JUSTICES. *Ex parte* JACOBS

November 19, 1956, January 30, 1957

Criminal Law—Sentence—Probation—Total length of probation period—Probation order for three years—Previous probation order not discharged—Criminal Justice Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 3 (1), *s.* 6 (3) (*a*).

MOTION for order of *certiorari.*

In December, 1955, B, a girl aged 19, was convicted at Poole magistrates' court of larceny and was placed on probation for two years. The probation order included a condition of residence at a hostel in North London. In February, 1956, B was brought before the magistrate at the North London magistrate's court for a breach of the order. The magistrate gave her an absolute discharge, and amended the order by substituting for residence at the hostel residence at an approved school in Hampshire. In consequence of that amendment, the Havant magistrates' court became the supervising court. B committed a further breach of the order and was brought before the Havant magistrates' court. On May 4, 1956, that court made a fresh probation order for three years. B committed a breach of the new order, and was again brought before the Havant magistrates' court, who then committed her to Hampshire quarter sessions for sentence, under s. 28 of the Magistrates' Courts Act, 1952. Quarter sessions sentenced her to undergo a period of Borstal training. B's mother (Mrs. Jacobs) obtained leave to apply for an order of *certiorari* to quash the order of the Havant court, the ground of the application being that the probation order was invalid by reason of the fact that at the time of making it the original probation order of December, 1955, had not been discharged with the result that B would be on probation for a period exceeding three years, the maximum period permitted by s. 3 (1) of the Criminal Justice Act, 1948.

Held: that, though the Havant magistrates' court had no power to discharge the original order, which could be discharged only by the Poole magistrates' court on the application of the probation officer or the probationer, their powers were regulated by s. 6 (3) of the Criminal Justice Act, 1948. If they decided to deal with the offender otherwise than by imposing a fine not exceeding £10 or making an order requiring attendance at an attendance centre (where such was appropriate), they had under para. (*a*) power to deal with the offender in any manner in which they could have dealt with her if they had just convicted her of the original offence, and that included the power to make a new probation order. They were not bound to have regard to the fact that there was a previous probation order in existence except in so far that they should be satisfied that a breach of that order had been proved. For all other purposes, the original order, though not discharged, became *ipso facto* of no effect. The order made by the Havant magistrates' court was, therefore, valid and the application must be refused.

Counsel: *Ingram Poole* and *A. R. Tyrrell*, for the appellant; *D. A. Grant*, for the respondent.

Solicitors: *Barnes & Butler*, for *J. W. Miller & Son*, Poole, *Theodore Goddard & Co.*, for *G. Andrew Wheatley*, Winchester.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

ARMSTRONG *v.* CLARK

January 30, 1957

Road Traffic—Driving under influence of drug—" Drug "—Insulin—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 15 (1).

CASE STATED by Cheshire justices.

At Prestbury magistrates' court three informations were preferred by the appellant, William Armstrong, a police officer, against the respondent, Jack William Clark. The first charged him with driving a motor car on a road when under the influence of a drug to such an extent as to be incapable of having proper control of the vehicle, contrary to s. 15 (1) of the Road Traffic Act, 1930. The second charged him with driving without due care and attention, contrary to s. 12 (1) of the Act, and the third was driving without reasonable consideration for other persons using the road, also contrary to s. 12 (1).

According to the facts found by the justices the respondent was a pharmaceutical chemist and had suffered from diabetes for the past 12 years. On August 13, 1956, he had taken by injection his usual and prescribed quantity of insulin and had then eaten a meal. He had then driven to a cinema theatre, a distance of about two miles. After leaving the cinema he remembered no more than that he walked or was walking down the steps at the entrance of the cinema. In fact, he got into his car, which he then drove for about four miles along the road, when the car left the roadway and went through a hedge into a field, travelling a distance of some 200 *yds.* until it stopped in gear. The respondent was found by the landowner later sitting rigidly at the wheel in a semi-comatose state. He had not sustained any apparent injury, and on medical examination after he had been taken to hospital was found to be in a coma due to the over-action of the insulin injection which he had taken earlier. The justices dismissed the informations, and the appellant appealed.

Held: that for the purposes of s. 15 (1) " drug " meant any substance taken as a medicine for the purpose of curing, alleviating or assisting an ailing body and included insulin. The first information, therefore, must be remitted to the justices with a direction to convict, but the court did not think it necessary to remit the other two informations.

Per Lord Goddard, C.J.: " Drink " in s. 15 (1) probably refers to alcoholic drink only.

Counsel: *R. J. Parker* and *F. P. Neill*, for the appellant; *Gerald Howard, Q.C.* and *Da Cunha* for the respondent.

Solicitors: *Gregory, Rowcliffe & Co.* for *Hugh Carswell*, Chester; *Charles Russell & Co.*, for *Skelton & Co.*, Manchester.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MAGISTERIAL LAW IN PRACTICE

News Chronicle. December 13, 1956

SHE STOLE THE BIGGEST CAT IN ST. IVES

The biggest cat in St. Ives, Cornwall—where cats are cats—purred contentedly in court yesterday while the magistrates considered: had he been stolen?

Mrs. Mary Louisa Williams, wife of the licensee of the Miners' Arms, Camborne, was accused of stealing him, She pleaded not guilty.

And the cat, Monkey, a ginger and white five-year-old, purred approvingly while his master, Mr. Ernest White, said Monkey was the biggest cat in the town and worth £20.

A police search started for Monkey after he failed to return home one night. A neighbour remembered hearing someone calling "Puss, puss." When the police went to Mrs. Williams's home, 15 miles away, she brought the cat downstairs.

'Infested with cats'

She said she saw the cat in a shop doorway, and it jumped into her car.

Mr. J. C. W. Jones, defending, said St. Ives was invested with cats; so many it was impossible to say which was which. He reminded the court of the rhyme about them and suggested it was reasonable for Mrs. Williams to assume the cat was a stray.*

Fining Mrs. Williams £5, the chairman said: "Cats in St. Ives are of considerable value to their owners."

* *As I was going to St. Ives,*
I met a man with seven wives.
Each wife had seven sacks,
Each sack had seven cats,
Each cat had seven kits:
Kits, cats, sacks, and wives,
How many were there going to St. Ives?

Domestic animals of intrinsic value, as horses, oxen, sheep, swine, and the like may be the subjects of larceny at common law. Domestic birds, also, of intrinsic value as ducks, hens, geese, turkeys, peacocks, etc., may be the subjects of larceny at common law; so may their eggs or young ones (1 *Hale*, 511).

But there were some animals which, though they might be reclaimed, yet were considered of so base a nature that no larceny could be committed of them; such as dogs, bears, foxes, monkeys, cats, ferrets, and the like (1 *Hale*, 512).

The stealing of any horse, cattle, or sheep is now a felony under s. 3 of the Larceny Act, 1916. The stealing of any other animal the subject of larceny at common law is simple larceny under s. 2 of the Larceny Act, 1916.

Dog stealing is dealt with under s. 18 of the Larceny Act, 1861, and s. 5 of the Larceny Act, 1916. Cat stealing, and the stealing of other domestic animals, not the subjects of larceny at common law, comes within s. 21 of the Larceny Act, 1861. That section provides that whosoever steals any bird, beast, or other animal ordinarily kept in a state of confinement or for any domestic purpose, not being the subject of larceny at common law, or shall wilfully kill any such bird, beast, or animal, with intent to steal the same or any part thereof shall be liable to imprisonment for a term not exceeding six months or to forfeiture (over and above the value of the bird, beast or animal) of a sum not exceeding £20, and, for a subsequent offence, to imprisonment for a term not exceeding 12 months. Under s. 22 the court may restore the property to the owner.

Being liable to more than three months' imprisonment the defendant has a right to claim trial by jury, under s. 25 of the Magistrates' Courts Act, 1952. According to *The Times* report of this case Mrs. Williams was not present in court. If that were so she lost that right, for s. 25 (2) provides that the claim shall be of no effect unless the defendant appears in person and makes it before he pleads to the charge. Section 99, which allows for the appearance of a party by counsel or solicitor, provides that "appearance of a party by counsel or solicitor shall not satisfy any provision in any enactment or any condition of a recognizance expressly requiring his presence."

MISCELLANEOUS INFORMATION

ANNUAL REPORT OF THE KENT MEDICAL OFFICER OF HEALTH

The annual report of the medical officer of health for Kent includes an interesting review of services which are administered by the health committee under the National Assistance Act, 1948. On child care, reference is made to the new family help service under which help is provided, where necessary, during the absence of the mother, so as to keep the family together by the avoidance of children having to be taken into children's homes or boarded out. The service is restricted to families of two or more children where application has been made to the children's committee for the children to be taken into care during the temporary absence of the mother, and is limited to an initial period of not more than three months. The total cost in the first year was £6,389, which is less than half what would have been the cost of maintaining the children by the county council. The report on the domestic help service shows that in Kent, as elsewhere, this has been developed mainly for the care of old people. In spite of this, however, there continues to be a steady increase in the demands for residential accommodation. Another new service, in extension of the domestic help service, is the provision of an evening and night attendant service. The purpose of the evening service is to provide a helper to call in during the evening to help old people who are bedridden or housebound with their preparations for the night. The night attendant service is to provide for old people who are seriously ill and who live alone or with someone unable to care for them. Normally this service is only provided for persons over 70 years of age. The report gives a detailed account of the types of persons who have been helped and of the general arrangements which should be of interest to other local authorities contemplating the provision of such a service.

Residential accommodation

Since the National Assistance Act came into operation residential accommodation has been provided in Kent for 896 additional persons, most of this being in small old people's homes. It is noted that one factor changing the character of old people's homes, and this applies generally throughout the country, is the later stage at which permanent admission to chronic sick hospitals is now considered. In so far as this permits remedial treatment being given to elderly people in the earlier phases of degenerative changes, this clearly is, in the view of the Kent medical officer, the proper course, but it does mean a change in the responsibility of many of the staff because a much greater degree of care and attention is called for than was envisaged when the Act came into force. Sometimes there are suggestions that elderly people are admitted to Homes unnecessarily and that a greater respect for their parents on the part of sons and daughters would reduce the need. A survey made during 1955 of 100 concurrent admissions to Kent homes showed that 57 were over 75 years of age and only 16 under 65, the latter requiring special forms of care. Of the 100 admissions 45 were in relief of hospital accommodation. Particulars are given of the circumstances of the remainder.

FINAL DIVIDEND IN THE DISTRIBUTION OF ROUMANIAN PROPERTY

The Board of Trade announce that the Administrator of Roumanian Property is about to pay out of Roumanian assets in the United Kingdom a second and final dividend of 3*s*. 8*d* in the £ to claimants in the Distribution whose claims have been established by the Administrator under the Treasury Directions of July 28, 1954. This dividend, with the first and interim dividend of 5*s*. in the £ announced in July, 1955, makes a total distribution of 8*s*. 8*d*. in the £. After making due provision for the expenses of distribution and reserves against legal claims or the upshot of the result of litigation at present in progress, the dividend exhausts the assets available for distribution to British creditors.

It will accordingly no longer be possible for the Board of Trade to consider applications for the release *ex-gratia* of the assets of individual Roumanians who were the victims of racial or religious persecution.

This is a final dividend. No estimate can be made at present of the extent to which assets beyond those required for it will fall into hand, but it is most improbable that it will be sufficient to justify any further payments to creditors.

Hungarian Property

In view of recent events in Hungary the Distribution of Hungarian assets by the Administrator of Hungarian Property to British creditors of Hungary whose claims have been established in the Distribution has been deferred until after the Roumanian Distribution.

JUVENILES REGISTERING FOR EMPLOYMENT

Some time ago the County Councils Association and the Association of Municipal Corporations suggested to the Ministry of Labour and National Service that a juvenile insurance card should not be issued before the end of the school term during which the age of 15 is reached. It was pointed out in the last report of the education committee of the A.M.C. that as the law stands at present, compulsory school age extends to the end of the term during which a child attains the age of 15, but he may be issued with an insurance card as soon as he reaches his 15th birthday. The Ministry have replied to the associations stating that while they agree that the legal position is most complicated the general view has hitherto been that there has been no evidence that abuses were taking place on any scale which would justify legislation; but that if there is such evidence, there may be a case for taking the matter up afresh. Both associations are therefore asking their constituent members to report any cases which have come to their knowledge of children who had left school during the term in which their 15th birthday occurred and had been issued with insurance cards enabling them to enter employment.

WALSALL FACTS AND FIGURES, 1955–56

Borough Treasurer D. H. Charlesworth, M.B.E., F.S.A.A., F.I.M.T.A., has published another excellent summary of the finances and services of the county borough which he serves. Summaries of expenditure and income on revenue and on capital account together with statistics of area, population, rating assessments and the like take up but six pages of this pocket-sized booklet: the remaining 35 pages deal in alphabetical order with the services provided by the authority. We think this quite the best way of presenting facts and figures for the use of council members and the interested inquiring ratepayer, and should like to see this example more widely followed.

Walsall is a Midland industrial borough on the edge of the Black Country, making its unspectacular but important and steady contribution to the prosperity of Britain. Rates stood at 21*s.* 2*d.* in 1955–56, only 4*s.* 11*d.* more than in 1930, so it is obvious that the ratepayers real burden is considerably less now than it was 26 years ago. Although rates have not greatly increased since 1930 loan debt has almost quintupled to a total of £13¾ million, but most of the new borrowing has been on housing account. At March 31 the council owned 13,600 dwellings (total number of houses and flats in the borough is 32,700) on which expenditure of £11¾ million had been incurred. The Housing Revenue Account showed a small surplus of £800 for the year, the total expenditure being met as follows:

	£	*Percentage*
Taxpayers' subsidies	170,000	26
Ratepayers' subsidies	62,000	9
Tenants' rents	422,000	65
	654,000	100

The average net rent for three-bedroom post-war houses was 15*s.* 2*d.*, 3*s.* per week being added for a lodger. Rents were formerly based on area and amenities but a revised method was brought into operation from January 28, 1957. Expenditure on repairs has kept close to an average of £10 per house over the last seven years: the repairs fund balance in hand at the year end was equal to £6 per house.

The council provide both outdoor and indoor entertainment including band concerts, concert parties and children's entertainers in the parks, and dances in the town hall, the whole costing about 1½*d.* rate. Several parks and recreation grounds are maintained, the largest being the unusually but appropriately named Arboretum of 80 acres. The whole cost a rate of 1*s.* 5*d.*, subject to equalization grant aid of about 33 *per cent.*

Swimming baths, medicinal and turkish baths are provided. Charges paid by the public cover the greater part of the expenditure, leaving a net rate charge of ·35*d.*

The council have been successful in boarding out 141 children out of 266 in care.

The year saw a large increase in highways expenditure, the cost amounting to £94,000 as compared with £64,000 in the previous year: as highway maintenance on county boroughs does not attract any government grant the rate levy for this purpose rose sharply from 1*s.* 7*d.* to 2*s.* 6*d.*

OLD PEOPLE'S WELFARE IN LEICESTER

In the report of the Leicester City Welfare Department for 1955–56 special reference is made to the need for accommodation being available in small homes for "short stay" cases as many more applications are being received for the temporary care of old people during their relatives' holidays, illnesses or periods of temporary absence. The value of assisting relatives to care for their own people needs hardly to be stressed both in the interest of the persons concerned and the ratepayers as a whole. The committee intends to give early consideration to the provision of such accommodation. As in some other parts of the country certain of the new homes to be provided in Leicester are being sited on housing estates. One new home on such a site is to be planned as an all-purpose home, with additional facilities which would allow meals and other services to be provided for the old people residing in the bungalows on the estate. It is also envisaged that help and advice by the warden of the home could be given as may be required to old people residing on this site with a view to maintaining their independence in their own homes for the longest possible period. It is felt that a close link of this kind between the old people's home and the old people residing in the bungalows will be to their great benefit.

Reference is made in the report to the decision of the National Corporation for the Care of Old People to provide a home in Leicester for the more infirm aged on the lines suggested in Ministry of Health Circular 3/55. The Corporation will provide sufficient capital to build, equip and furnish the home, the council to be responsible for the running costs of the home. In a review of the existing homes in the city it is noted that the number of the residents in the higher age groups continue to increase. Ninety *per cent.* are over 70 years of age, 78 *per cent.* are over 75 years and 50 *per cent.* are over 80 years of age. But with few exceptions the increased age of the old people has in no way diminished their interest in activities at their home and outside. The former poor law institution continues to be used to provide accommodation for some 300 residents but in an effort to make it more suitable to meet present needs some of the dormitories have been converted into cubicles. It is stated that many of the old people occupying the cubicles now feel they have a place of their own. The feeling of security and privacy so obtained has been apparent in both their mental and physical well-being. This is an example which might be copied more generally by other local authorities.

REVIEWS

Ryde's Rating Cases. By Michael E. Rowe, Harold B. Williams and David Widdicombe. Volume 1. Part 1. Butterworth & Co. (Publishers), Ltd. London, 1956. 3 gns. per volume (see below).

Since the Lands Tribunal took over the greater part of the judicial work connected with rating and valuation, a recurring source of difficulty to practitioners concerned with this work has been that few decisions found their way into the ordinary law reports from amongst those which were gradually building up precedents in the hands of the Tribunal.

The current edition of *Ryde on Rating* appeared about the same time as the new valuation lists came into force, and the publishers have wisely taken the opportunity to produce a set of rating reports, to serve as a companion volume to *Ryde*. The preface reminds readers that Walter Ryde himself originated similar reports, but that these have for many years been discontinued. The scope of the new reports, of which the first number appeared in November, 1956, will be to cover all decisions of the superior courts, and those of the Lands Tribunal which have real significance in the law or practice of rating. Orders as to costs made by the Lands Tribunal will be reported, and also unusual orders or special pronouncements of the courts about costs. Cases as to drainage and water rates will be included, if thought likely to be useful to practitioners. The editors are the senior editor and others of *Ryde* itself, and the reports are designed for noting up with *Ryde*. It is intended to publish paper bound parts (like that before us) of about 100 pages, whenever enough material becomes available, rather than at a fixed date. When enough material accumulates to make a fourth part, a bound volume will be issued, and the price of three gns. (not including postage) covers the three paper parts and the bound volume. This may or may not coincide with a period of 12 months, because at the outset the new valuation lists are likely to produce a number of decisions, while these should as time goes on be more spaced out. The first part, now before us, contains cases decided in 1956 up to the time of going to press. Of these, 10 were decided by the Lands Tribunal and eight by the Supreme Court or the House of Lords. With a practice direction given by the Master of the Rolls, designed to reduce the labour and expense of producing a Case Stated, the whole occupies 135 pages, or rather more than the norm of 100 pages aimed at by the publishers. The subjects of decision include derating, the exemption from rates of a scientific society, the beneficial occupation of a public park, the rating of crematoria, and the rating of water undertakings. In fact, there is hardly an aspect of rating and valuation work not touched upon. We notice also the status (*quoad* derating) of a motor service and repair depôt; the status (*quoad* " agriculture ") of a hatchery for chickens; the status (*quoad* " gross receipts ") of loan charges included in a water board's precept, and (*quoad* drainage rates) of a schedule A assessment not yet finally " determined." We have taken these at random, for the sake of showing at once the range covered by the new reports, and the practical character of the questions raised—some of these will, in the ordinary course, appear in previously existing law reports, but some will not. Moreover, each issue of the new series is to contain a list of pages in *Ryde* upon which there is new matter to be noted. *Ryde on Rating* has for long been one of the chief authorities on its own subject, and the series of reports now being initiated (or revived) will materially enhance its usefulness, both to public authorities concerned with rating and to those who may be called upon to advise the ratepayer.

The Law on the Pollution of Waters. By A. S. Wisdom. Shaw & Sons, Ltd. London. 1956. 37s. 6d. net.

Mr. Wisdom is known to our readers as a contributor of articles on several topics affecting local authorities. He is also Deputy Secretary and Solicitor of the Thames Conservancy. The law relating to the pollution of water gives rise to a good many queries in our Practical Points, and lies at the back of many queries which arise also in regard to sewage and sewage disposal. It is a topic of daily importance, an importance which increases with the growth and outward spread of populations. Hitherto, however, those affected have had to refer to various books, because the answer to a question might depend upon the common law rights of adjacent landowners or upon the Public Health Acts and allied statutes. In the present work, Mr. Wisdom sets out to collect and explain the effect of the rules of common law, and a large number of statutory provisions; there seem to be something like a hundred of these, and there is a wealth of judicial pronouncements, not always consistent. The work falls into chapters, of which the first is historical. The meaning of pollution and the nature of a right to pollute, prescriptive or otherwise, are then discussed, and separate chapters deal with sewage, trade effluents, and the pollution of fisheries. In the chapters headed " pollution of rivers," and " pollution of ports and tidal waters," the law is (so to speak) looked on from the other side. The learned author concludes with reference to a number of miscellaneous enactments about gas works, diseased carcasses, radio-active waste, and other sources of pollution, and a summary of the available remedies. There are more than 90 pages of extracts from public general Acts, and 40 pages of statutory instruments and circulars. We can foresee a most useful life for this work, in the hands of the officials of several types of public authority. It will also save much time for lawyers advising landowners and industrialists, who may be concerned, from one side or the other, in disputes about pollution. It is a really helpful book.

Receivership in Cases of Mental Illness. By H. F. Compton and R. Whiteman. London: Solicitors' Law Stationery Society Ltd., 21 Red Lion Street, W.C.1. Price 10s. 6d. net.

This is one of the valuable series called *Oyez Practice Notes*, and it first appeared in 1956. Both the learned authors are officers of the Court of Protection, and the solicitor concerned with handling the property of persons suffering from mental illness can, therefore, feel confident that the answers to his daily problems may be found here. Where a property owner becomes incapable of managing his own affairs, the most practical course is often to obtain the appointment of a receiver who can deal with accruing income and give a good receipt. Such cases are not uncommon, but the ordinary solicitor does not come across them often, and does not therefore have an opportunity to become familiar with the practice. In the work before us he will find an adequate explanation of the jurisdiction of the Court of Protection, and how a receiver is appointed and controlled by the Court. There are separate chapters for different types of business such as Funds in Court, Real and Leasehold Property, Deeds, Wills and Settlements, etc. At the present day local government officials also may from time to time need to refer to a book of this sort—perhaps more often than solicitors in ordinary practice. They can confidently be recommended to obtain this book.

PERSONALIA

APPOINTMENTS

Mr. Ronald George Silman, LL.B. (Lond.) (Hons.), L.A.M.T.P.I., senior assistant solicitor to Watford, Herts., corporation, has been appointed deputy town clerk of the borough of Weymouth, Dorset. Mr. Silman previously held appointments as assistant solicitor with Finchley borough council and Ruislip-Northwood urban district council. Mr. Silman's predecessor is Mr. Roland A. Cork, LL.B., who has been appointed town clerk of the borough of Lytham St. Annes, Lancs., *see* our issue of January 26, last. Prior to his appointment as deputy town clerk at Weymouth, Mr. Cork was assistant solicitor and then assistant town clerk of Slough, Bucks., moving to Weymouth in November, 1954. Mr. Cork was admitted in 1949, and gained the degree of LL.B., with honours, in 1946 at Manchester University.

Mr. Lionel Charles Rysdale has been appointed clerk to Wycombe, Bucks., rural district council. For the past five years he has held a similar position with Sodbury, Glos., rural district council. Mr. Rysdale has served in local government at Lincoln, Leamington Spa, and Solihull.

Mr. H. C. Wilkinson, at present second assistant solicitor to Grimsby county borough council, has been appointed senior assistant solicitor to Harrogate, Yorks., borough council (to succeed Mr. J. B. Harwood, LL.B., recently appointed deputy town clerk of Bedford). Mr. Wilkinson was previously at Lincoln.

Mr. A. J. Noon, LL.B. (Lond.), has been appointed assistant solicitor to the borough of Wanstead and Woodford, Essex. He served his articles with Mr. R. H. Jerman, O.B.E., M.C., M.A., F.C.C.S., town clerk of Wandsworth and since qualifying Mr. Noon has been a National Service officer in the R.A.F.

Mr. J. V. C. Washington, assistant principal probation officer, has been appointed deputy principal probation officer, London, in place of Mr. G. E. Neve. Mr. Neve has been assigned to the Royal Courts of Justice as senior court welfare officer for full-time duties relating to cases concerning the welfare of children.

ANIMUS REVERTENDI

In a previous article in this column (117 J.P.N. 91) we commented upon the misadventure that befell an intruder who was found, by the manager of a Philadelphia business-house, sound asleep in the office beside an unopened strong-box, with a screwdriver clutched in his hand. We then took occasion to remark upon the complex points of law which might have been raised if the episode had occurred in this country, instead of in the United States. And we noted the distinction drawn by the Larceny Act, 1916, between breaking and entering (*inter alia*) any office or factory *and committing* a felony therein, involving a maximum penalty of 14 years' imprisonment under s. 26, and breaking and entering *with intent to commit* a felony, in which case the maximum penalty, under s. 27 (2), is only seven years.

Truth is stranger than fiction, and that was the comment made recently by the chairman of the bench at Willesden magistrates' court on discharging one Thomas Arroyo, a Spanish turner, who had been charged with breaking and entering, by night, a factory at Harlesden, in the north-west of London, "with intent." The explanation given by the accused to the police struck them at the time as somewhat improbable, to say the least of it. Neither the breaking nor the entering was denied; but the intent, according to his story, so far from being felonious, was excusable, and, indeed, highly commendable. He was determined, he said, to get back into the premises for the purpose of properly completing a job that he had done badly during the previous day's work.

To the credit of the police be it said that this unusual explanation was faithfully repeated to the court, and to the still greater credit of the accused, the detective-inspector in charge of the case was able to tell the magistrates, after investigation, that the story was "fantastic, but true." The owner of the factory deposed that Arroyo had "made a mess of a turning-job" but was "over-conscientious to such a degree that he was prepared to break in at night to complete it properly." It was as he was climbing out through a window of the factory—apparently after finishing his task inside—that the police arrested him. It is pleasant to record that, the case against him having been dismissed, he is now back at work in the same place and job. What his Trade Union will have to say about this excess of zeal and supererogatory working of unpaid overtime, we can only guess; but so far as the criminal law is concerned he comes out of this imbroglio with an exemplary character.

The entire episode is likely to go down in police annals as "The Case of the Returning Turner"; under that title, we may be sure, it would have appealed, not so much to the methodical reasoning of Sherlock Holmes as to the paradoxical subtlety of Chesterton's Father Brown. Such a title has other associations too, historical and literary. Carlyle's *Sartor Resartus* (which might be freely translated "The Turncoat Returned") is one of them. Dick Whittington is another—and his case set an excellent precedent. Had he not paused on Highgate Hill and hearkened to the sound of Bow Bells, halting him on his flight out of London, and calling to him to "turn again" to the dreary streets of the Metropolis, he would never have had that meteoric rise to fortune and high office which history records, and the annals of the City would have been much the poorer. Let us hope Señor Arroyo will find his industry rewarded in no smaller measure.

Milton, too, might have had such circumstances as these in mind—darkness, the moon riding high; the workshop shrouded in obscurity; the bench looming ghostly in the gloom; the lonely toiler at his self-imposed task—when he wrote those lines in *Paradise Lost*:

> "For solitude sometimes is best society
> And short retirement urges sweet return."

In fact, all the associations are favourable—with one outstanding exception. That one, of course, is concerned with a woman—the wife of the patriarch Lot. She and her husband were permitted to escape from the fate that was to befall the Cities of the Plain, and their angel escorts adjured them not to turn back or look behind them at the awful sight. "Lot entered upon Zoar . . . but his wife looked back from behind him, and she became a pillar of salt." There is, however, a world of difference between such idle feminine inquisitiveness and the virile, industrious perseverance that Señor Arroyo has shown. Like his great fellow-countryman, Don Quixote de la Mancha, he is a romantic idealist, and if, out of excessive fidelity to his ideals, he has tilted at the windmill of the law, the circumstances do him nothing but honour.

A.L.P.

BOOKS AND PAPERS RECEIVED

Archbold's Criminal Pleading. Thirty-third edition. Tenth cumulative supplement. By T. R. Fitzwalter Butler and Marston Garsia, Barristers-at-Law. Sweet and Maxwell, 2 and 3 Chancery Lane, London, W.C.2.

Bell's Sale of Food and Drugs. 13th edition. By John A. O'Keefe, B.Sc. (Econ.), LL.B., Barrister-at-Law. London: Butterworth & Co. (Publishers) Ltd., 88, Kingsway, W.C.2. Price £5 10s. net, postage 2s. extra.

The Inspector. Official journal of the Institute of Shops Acts Administration. December, 1956.

NOTICES

Five Public Lectures will be given in the Lent term, 1957, on Mondays at 5 *p.m.*, at University of London King's College Faculty of Laws, Strand, W.C.2., by Mr. G. I. A. D. Draper, LL.M., Lecturer in Laws at King's College and formerly Assistant Director of Army Legal Services, the War Office, on The Geneva Conventions of 1949 for the protection of war victims and their place in the Law of War.

At the first lecture the chair will be taken by Sir Hersch Lauterpacht, Q.C., M.A., LL.D., F.B.A., Judge of the International Court of Justice, The Hague.

The historical background, the underlying principles and the "Common Articles" of the Geneva Conventions of 1949—Monday, February 18, 1957.

The Convention relative to the protection of civilian persons in time of war—Monday, February 25, 1957.

The Convention relative to the treatment of prisoners of war—Monday, March 4, 1957.

The Conventions for the amelioration of the condition of the wounded and sick in armed forces on land, and of the wounded, sick and shipwrecked members of armed forces at sea—March 11, 1957.

An assessment of the contribution of the Geneva Conventions of 1949 to the Law of War—Monday, March 18, 1957. Admission free, without ticket.

Life is only held on lease
(It's got its limitations):
You can't, alas, renew the lease—
Or avoid the dilapidations.

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Food and Drugs—*Food and Drugs Act*, 1955, *s.* 2—*Purchase for analysis.*

Section 2 of the Food and Drugs Act, 1955, replaces s. 3 of the Food and Drugs Act, 1938, with this important difference, namely that subs. (3) of s. 2 of the 1955 Act says that "a reference to sale shall be construed as a reference to sale for human consumption." This limitation was present in the case of milk under s. 9 of the Food and Drugs (Milk, Dairies and Artificial Cream) Act, 1950, but the problem could be overcome under that Act by taking action not for "selling" but for "having in possession for sale."

It is perfectly true that s. 111 of the 1955 Act, the presumptions section, has this to say:

(*a*) Any article commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale, for human consumption.

Unfortunately one can forsee a certain amount of trouble arising under the new Act where a sampling officer of a local authority purchases an article with a view to analysis as a result of which proceedings are instituted. The defendant can, as I see it, rebut the presumption raised by s. 111 (*a*) by proving that the article of food was not in fact sold for human consumption but was sold for the purpose of analysis. If that submission is accepted then no offence has been committed under s. 2.

I should be glad to have your views on this problem and in particular whether you think the difficulty can be overcome by the sampling officer, at the time when he purchases the sample, avoiding any inference that the purchase is for the purpose of analysis, even though analysis subsequently takes place? GURY.

Answer.

We do not understand our correspondent's difficulty. Section 2 (2) of the Act states specifically that it shall not be a defence to allege that the purchaser bought for analysis and therefore was not prejudiced.

2.—Game—*Game Licences Act*, 1860, *s.* 4—*Game Act*, 1831, *s.* 23.

A and B were stopped by a gamekeeper on certain private land. A was carrying a loaded shotgun and told the keeper that they had come to shoot pigeons. They all returned to a motor van parked on the main road nearby, where C, the owner of the van, was seated in the driver's seat. No game was found in their possession.

Seen later by the police, A and B stated they had gone to shoot ducks but had no chance to shoot at anything before the keeper came upon them. C said "We had seen pheasants there when we were going by, and thought we could get some." He further added that they had been travelling that way, to and from work, recently. C further stated that he had remained in the van the whole time A and B were away. None of them hold game or gun licences.

The private land extends to both sides of the road where the vehicle was parked and the shooting rights are held by a syndicate. There are a large number of pheasants there, and the preserve is known as the "X" shoot.

In view of the wording of s. 4 of the Game Licences Act, 1860,

(*a*) do you consider that C was aiding or assisting A and B?

(*b*) do you consider that A could properly be charged under s. 23 of the Game Act, 1831, for using a gun for the purpose of searching for game in addition to a charge under s. 4 of the Game Licences Act, 1860, by reason of s. 6 of the Game Licences Act, 1860, and

(*c*) if your answer to (*b*) is "Yes," do such proceedings need prior authorization of the council? H.C.L.T.O.

Answer.

(*a*) Yes.

(*b*) Yes. The proviso to s. 23 of the Game Act, 1831, states specifically that conviction under that section shall not be an exemption from any penalty under any statute relating to game certificates.

(*c*) Yes. *See* Transferred Excise Duties (Application of Enactments) Order, 1952 (S.I. 1952 No. 2205), which applies s. 281 of the Customs and Excise Act, 1952, to local authorities.

3.—Guardianship of Infants Acts—*Father residing in Jersey—Procedure.*

We are acting for the mother of a child aged four years who has left her husband who resides in Jersey, on the ground of domestic differences.

We advised her to issue a summons under the Guardianship of Infants Act, 1926, in the local magistrates' court for the custody of the child and for the payment by her husband for the maintenance of the child but the police have now returned the summons because it does not appear that it can be served in the Channel Islands.

We shall be glad to know whether there is any means of effecting service of the summons and whether an order of the court under the Guardianship of Infants Act, 1926, is enforceable in the Channel Islands. QUIRIC.

Answer.

There is no provision for the service of the summons in the Channel Islands, but the Maintenance Orders (Facilities for Enforcement) Act, 1920, was applied to Jersey by the Maintenance Orders (Facilities for Enforcement) (Jersey) Order, 1953, S.I. 1953, No. 1215.

The mother can accordingly apply to a court in England for a provisional order of maintenance, and the provisional order can be transmitted for confirmation, and, if confirmed, enforced, in Jersey.

4.—Licensing—*Gaming on licensed premises—Licensing Act*, 1953, *s.* 141 (1)—*Small Lotteries and Gaming Act*, 1956, *s.* 4 (6).

The question has been raised whether or not it is permissible to conduct a certain sweepstake, which complies with the requirements of s. 1 of the Small Lotteries and Gaming Act, 1956, and is accordingly deemed not to be illegal, in licensed premises.

Under s. 141 of the Licensing Act, 1953, it is an offence for a licence holder to suffer any gaming or unlawful game to be carried on in his licensed premises. Under s. 4 of the Small Lotteries and Gaming Act, 1956, certain small gaming parties are deemed not to be illegal, but subs. (6) of s. 4 provides that nothing in that section shall affect the operation of s. 141 of the Licensing Act, 1953.

Section 21 of the Betting and Lotteries Act, 1934, declares all lotteries, other than those specifically exempted in part 2 of the Act, to be illegal.

By s. 5 of the Small Lotteries and Gaming Act, 1956, ss. 1 and 4 of that Act are deemed to be incorporated in part 2 of the Betting and Lotteries Act, 1934.

I am inclined to the view that the conduct of a sweepstake complying with the requirements of s. 1 of the Small Lotteries and Gaming Act, 1956, is permissible in licensed premises for the following reasons:

(1) Such a lottery does not constitute gaming or an unlawful game within the meaning of s. 141 of the Licensing Act, 1953. *Morris* v. *Baguley* (1937) B.T.R.L.R. 73, is usually cited as an authority to the contrary. In fact, the sweepstake in that case appears to have been regarded as an illegal lottery. This is not now the position on the problem submitted, and a sweepstake is not one of the games declared to be lotteries by the Gaming Acts, 1738 and 1739, nor does it constitute a gaming party within the meaning of s. 4 of the Small Lotteries and Gaming Act, 1956.

(2) Venue is not mentioned in s. 1 of the Small Lotteries and Gaming Act, 1956, whilst the exemptions in s. 4 are specifically excluded when taking place in licensed premises. As Parliament had the matter before it, the inference is plain that no restriction on the generality of the scope of s. 1 was intended.

I shall be pleased to have your comments on this. O. SIGMA.

Answer.

Until this point is settled by a decision of the High Court, we feel bound to take the view that a small gaming party which depends for its legality on the exempting provisions of s. 4 of the Small Lotteries and Gaming Act, 1956, may not be held on licensed premises for the reason that s. 141 of the Licensing Act, 1953, prohibits it. The very section which would ordinarily exempt such a party says in terms in subs. (6) that the section does not affect the operation of s. 141 of the Act of 1953. We can only construe subs. (6) as meaning that a small gaming party that was caught by s. 141 of the Act of 1953 before the coming into operation of s. 4 of the Act of 1956 continues to be caught by it. We agree that *Morris* v. *Baguley* (1937) B.T.R.L.R. 73 is not strong authority; but it seems to be the only reported authority on its subject matter and we cannot ignore it.

5.—Licensing—*Registered club—Complaint for striking off register—Admissibility of evidence of* (*a*) *a previous striking off; and* (*b*) *previous convictions of persons connected with club.*

Subsection (5) (*b*) of s. 144 of the Licensing Act, 1953, states that if premises have been ordered to be removed from the register of clubs on a previous occasion then the magistrates may order that premises shall not be occupied and used for the purpose of any registered club for a period of five years. When a complaint is made to a magistrates' court that a registered club is not being conducted in good faith, etc., is it admissible to (*a*) call evidence to prove a

previous striking off, and (*b*) call evidence to prove previous convictions against persons connected with the club for offences against the Licensing Act and committed when concerned in the running of clubs. N.A.S.

Answer.

A complaint under s. 144 of the Licensing Act, 1953, to strike a club off the register is not a criminal proceeding (*see* remarks of Lord Goddard, C.J., in *R.* v. *Glamorganshire JJ., ex parte Barry Dock Coronation Working Men's Club and Institute* (1955) 119 J.P. 218) therefore the provisions of the Criminal Evidence Act, 1898, have no application.

In our opinion, the admissibility of evidence of both the matters mentioned by our correspondent depends on the view which the court takes of their relevancy.

(*a*) We think that evidence of a previous striking off can have little relevance to the matters of complaint now being considered, and evidence on this point should not be called until the matters of complaint have been established and an order has been made under s. 141 (1) that the club shall be struck off the register.

(*b*) While evidence of previous convictions under the Licensing Acts of persons connected with the club is not inadmissible, we think that its admissibility in relation to the matters of complaint now alleged should be tested by the question of whether it is sufficiently substantial to make it desirable in the interest of justice that it should be admitted (*see* remarks of Lord du Parcq in *Noor Mohamed* v. *R.* [1949] 1 All E.R. 365).

6.—Licensing—" *Supper hour extension "—Whether the expression " at a meal " is wide enough to include period taken up with after-dinner speeches.*

A hotel has an extension of permitted hours under s. 104 of the Licensing Act, 1953, for the supply of intoxicants with meals up to 11 *p.m.* A local society holds formal dinners at the hotel following its monthly meetings. The time of the dinner varies according to the length of the earlier meeting. The actual meal is usually consumed before 10 *p.m.*, but the speeches and toasts frequently continue until about 10.30 *p.m.*

The question has been raised as to whether intoxicants can be bought and consumed after 10 *p.m.*, while the speeches and toasts continue, the actual eating having finished.

Your opinion is sought as to whether such intoxicants are sold, or supplied only for consumption at a meal, supplied at the same time, in accordance with the provisions of s. 104 (4) (*c*). NOORK.

Answer.

We attempted to answer similar questions to this at 112 J.P.N. 459 and 117 J.P.N. 599.

There is no case law on the subject, but we think that the High Court would define " consumption at a meal " as this phrase occurs in s. 104 (4) of the Licensing Act, 1953, with some elasticity so as to make the overall length of time spent in the meal long enough to include the period of formal speeches which occur at a formal dinner after the actual eating has ended. But we think that some limit would be placed on the elasticity of interpretation, and where the dinner-plus-toast-list overruns permitted hours, a special order of exemption should be obtained under s. 107 of the Licensing Act, 1953.

In the case outlined by our correspondent, the function is concluded during the period of the " supper-hour extension " and, in our opinion, it is unlikely that a prosecution for an offence would succeed.

7.—Public Health Act, 1936, s. 269—*Condition limiting numbers—Breach of condition on separate days.*

Licences have been issued by my council to the owners of caravan sites in this district specifying the number of moveable dwellings which may be permitted on the site at any given time. On two separate occasions during last season it was noticed that on one site there were caravans in excess of the permitted number. On the first inspection there were two and on the second four in excess of the permitted number. I should be obliged if you would advise me whether this constitutes two separate offences, and should be the subject of two separate complaints to the magistrates. BOXIB.

Answer.

The offence created by s. 269 (7) of the Act is failing to comply with a condition of the licence. The relevant condition authorized by s. 269 (1) is " with respect to the number . . . which may be kept thereon at the same time." It seems therefore that a licensee who allows a greater number to be " kept " (which must here mean " put ") commits a fresh offence on every day. We can imagine a defence that, where (say) two too many were put on the land and left there, this was a single offence, and in such a case no local authority would be likely to allege successive offences. But in the case before us the second day was marked by four vehicles, instead of the previous two, and we consider that a new offence was committed.

8.—Road Traffic Acts—*Provisional licence—Holder, by false statement, obtains a Northern Ireland licence and drives here on that licence—Convicted in N. Ireland of the false statement offence but licence not revoked—Validity of that licence.*

A had three provisional driving licences prior to one which he obtained on July 22, 1956, which expired on October 21, 1956. He had several tests with a view to obtaining a full driving licence, but always failed.

On September 11, 1956, he went to Belfast and obtained a Northern Ireland driving licence by making a false declaration that he was permanently resident there, and he gave an address which was found to be correct, but at which he had never stayed. He went by plane and returned by plane the same day. He then threw away his " L " plates and commenced to drive without being accompanied by a competent driver.

The police here knowing that he had formerly displayed " L " plates stopped him whilst he was driving his car. No competent driver was with him and no " L " plates were being displayed and he produced to the police officer who requested to see his driving licence, the Northern Ireland driving licence which he had obtained a few days previously. Later the same day he also produced his provisional driving licence, which was a current one, and which expired on October 21, 1956. He was then reported for the two offences under these Regulations—the Motor Vehicles (Driving Licence) Regulations, 1950, reg. 16 (3) (*a*) and (*c*).

The information regarding the Northern Ireland driving licence was brought to the notice of the police at Belfast, and they later issued a warrant for his arrest. He was taken back to Belfast and on December 12, 1956, he was charged at the Belfast court for obtaining a driving licence by making a false declaration. He pleaded guilty and was fined £5, but for some reason unknown to the police here, his licence was not revoked.

He appeared before the magistrates at —— on Friday, December 14, 1956, for the two offences already quoted. The conviction already mentioned on December 12, 1956, was proved and we partly based our case on the fact that the licence obtained in Belfast was secured by fraud, and was, therefore, not a valid licence.

A, who pleaded not guilty and was defended by a solicitor, argued that even though the offence in Belfast was admitted, the fact that the court in Northern Ireland did not disqualify or revoke his licence made that licence a valid one.

It was further argued by the prosecution that the holder of a Northern Ireland driving licence is allowed to drive in Great Britain by virtue of s. 32 of the Road Traffic Act, 1930 (S.R. and O., 1930, 1005), and therefore, this is a licence within the meaning of the Road Traffic Act. If this be so, reference to subs. (8) of s. 4 of this Act defines the expression " licence " as meaning a licence to drive a motor vehicle granted under this part of this Act or under art. 5 of the Motor Car (International Circulation) Order, 1930. A further reference to subs. (6) of the same section says " A person shall be disqualified for obtaining a licence (*a*) while another licence granted to him is in force whether the licence is suspended or not."

In this particular case A was the holder of a current licence (provisional driving licence) when he obtained another licence (Northern Ireland driving licence) and the inference is that the latter licence is null and void (s. 4 (4)).

The case was adjourned for 14 days in order to ascertain whether there was any case law on this subject and I should be greatly obliged if you would assist me in this matter. MUDER.

Answer.

The position seems to us to be wholly unsatisfactory, but we cannot find any provision which makes the N. Ireland licence invalid. It might be argued that the principle that no one may retain any benefit arising from his own fraud or wrongful act can be relied upon for the purpose but it was considered necessary to insert in s. 7 (4) of the 1930 Act a special provision that a licence wrongfully obtained by a disqualified person is of no effect, and there is no such provision in s. 112 (2) with regard to a licence obtained by virtue of a false statement.

The effect of s. 32 of the 1930 Act is not to make the N. Ireland licence a licence for the purposes of that Act but to relieve the holder of a N. Ireland licence of the need to hold a licence under that Act. He is allowed to drive here on his N. Ireland licence. We think, therefore, that the prosecution's argument based on s. 4 (6) of the 1930 Act is not a sound one.

In all the circumstances we think that, unsatisfactory though the conclusion is, the defendant was entitled at the material time to drive here on his N. Ireland licence.

CITY OF MANCHESTER

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the above appointment. Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointment and salary will be in accordance with the Probation Rules, 1949 to 1956.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than March 4, 1957.

HAROLD COOPER,
Secretary of the Probation Committee.
City Magistrates' Court,
Manchester, 1.

CITY OF SALFORD

Assistant Solicitor

ASSISTANT Solicitor required. Salary scale £999 7*s.* 6*d.*—£1,230. Commencing salary according to qualifications and experience.

Municipal experience desirable but not essential. Must be good advocate.

Applications, with names of two referees, to the undersigned by March 9, 1957.

R. RIBBLESDALE THORNTON.
Town Clerk.

Town Hall,
Salford, 3.

BOROUGH OF RICHMOND, YORKSHIRE

Appointment of Town Clerk

APPLICATIONS are invited from Solicitors and other persons qualified by experience for the Office of Town Clerk. The salary and conditions of service will be in accordance with the Recommendations of the J.N.C. for Town Clerks (Population 6,010), and the commencing salary will be according to qualifications and experience.

The appointment will be subject to the Local Government Superannuation Acts, to the passing of a medical examination and will be determinable by three months' notice on either side.

Applications, stating age, qualifications, experience and details of present and past appointments, together with the names of two referees, contained in a sealed envelope marked in the left-hand corner, "Application for Town Clerkship," must reach me at the Corporation Offices, Richmond, Yorkshire, by not later than the first post on Monday, March 4, 1957. Canvassing will disqualify and candidates must state in writing whether or not they are related to any member or senior officer of the Council.

J. E. BARRIE,
Town Clerk.

When replying to advertisers please mention the Justice of the Peace and Local Government Review

WEST RIDING AREA PROBATION COMMITTEE

Appointment of a Senior Probation Officer to be centred in the County Borough of Barnsley

APPLICATIONS from experienced whole-time Probation Officers are invited for the above appointment. The salary will be in accordance with the Third Schedule to the Probation (No. 2) Rules, 1956.

Full particulars together with form of application may be obtained from the Principal Probation Officer, 91, Northgate, Wakefield.

Applications, accompanied by three recent testimonials must reach the undersigned not later than March 16, 1957.

BERNARD KENYON,
Clerk to the Area Probation Committee.
Office of the Clerk of the Peace,
County Hall,
Wakefield.

BOROUGH OF WATFORD

Assistant Solicitor

APPLICATIONS are invited for this post on A.P.T. Grade VII (£999 7*s.* 4*d.*—£1,230) depending upon qualifications and experience.

Housing accommodation available.

Application forms and further particulars obtainable from me. Closing date March 5, 1957.

GORDON H. HALL,
Town Clerk.

Town Hall,
Watford.

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